



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/021
Order No.: 174 (NBI/2016)
Date: 30 March 2016
Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

MUKENDI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Simone Parchment, WFP
Tina Yuting Wu, WFP

Introduction

1. The Applicant filed this Application for a suspension of action on 20 January 2016 in French.

2. The present Order is drafted in English. These are the reasons for that course of action.

a. First, with the exception of the Judge dealing with this Application, all Legal Officers and the Registrar in Nairobi are English speaking. Drafting the Order in English would therefore ensure that the Judge gets the necessary support from Legal Officers and the Registrar.

b. Secondly, the Respondent's Reply is in English.

c. Thirdly, in her Application, the Applicant, who is self-represented, does make reference to quotes from cases and statutory provisions in English and the presiding Judge infers from this that the Applicant is familiar with the English language.

d. Fourthly, a suspension of action must be determined within five days from the day the Respondent is notified of same and it would be practically impossible to have a translation in French or English, as the case may be, within that short time frame in the absence of an interpreter at the Tribunal.

e. Finally, it should be noted that art. 11.4 of the Tribunal's Statute and art. 25.3 of the Tribunal's Rules of Procedure stipulate, inter alia, that judgments shall be drawn up in any of the official languages of the United Nations.

3. It is also to be noted that art. 11.5 of the Tribunal's Statute provides that,

a copy of the judgement shall be communicated to each party in the case. The applicant shall receive a copy in the language in which the application was submitted unless he or she requests a copy in another official language of the United Nations.

It is always open to the Applicant to request a copy of the Order in French.

Facts submitted by the Applicant

4. The Applicant joined the World Food Programme (WFP) in the Democratic Republic Congo (DRC) in 1997. She spent one year in Kisangani and 12 years in Goma where she is a Programme Officer (PO) grade NO-A. She has in the course of her career occupied several positions.

5. In February 2014, she was informed that following a restructure the post of PO would be reclassified to NO-B from NO-A. She applied for the new position but was not selected.

6. By a memorandum dated 22 January 2016, the Applicant was informed that following a restructure staffing review certain posts would be reclassified.

7. On 25 January 2016, the Applicant was informed that that the position she was encumbering would be abolished and reclassified as NO-B effective 1 April 2016 but that her contract would be valid until 31 March 2016. She was also requested to apply for all positions commensurate with her qualifications.

8. The Applicant was informed on 10 March 2016 that she had not been selected for the position of PO, NO-B for which she applied.

9. On 15 March 2016 she received an offer for the post of PO, NO-A in Bunia setting out the terms of her employment. She signified her acceptance of the offer on 17 March 2016 by signing the letter of offer.

Applicant's submissions

10. The Applicant avers that the selection process for the position of PO, NO-B for which she was not selected was procedurally flawed because the rules in an information circular and paragraph 1.3 of ST/AI/1999/9 (Special measures for the achievement of gender equality) were not complied with.

11. She is requesting that the selection decision in respect of the post PO, NO-B be rescinded and that the post she was offered be properly budgeted.

Respondent's Submissions

12. The Respondent submits that the Applicant has no *locus standi* before the Dispute Tribunal because, on 1 July 2014, the Respondents transferred all its national staff members, including the Applicant, from appointments governed by the United Nations Staff Regulations and Staff Rules to appointments governed by the Food and Agriculture Organization (FAO) Staff Regulations and Rules.

13. In support, the Respondent refers to FAO staff regulation 301.11.2 through which the Respondent now accepts the jurisdiction of the International Labour Organization Administrative Tribunal (ILOAT) in respect of actions filed by any of its staff members, whether recruited nationally or internationally, in respect of matters arising after 1 July 2014.

14. Given the above it is ILOAT that has jurisdiction over the present Application.

15. The Respondent also submits that the jurisdictional arrangement is reflected in the Applicant's 6 June 2014 letter of appointment which the Applicant signed thereby expressing her consent and acquaintance with the FAO Staff Regulations and Rules.

Considerations

16. Chapter VIII.2 of the WFP Human Resources Manual titled "Appeals" clearly indicates, at section 5.1 that,

An appellant who is not satisfied with a final decision of the Director General made pursuant to Staff Rule 303.1.311 or 303.1.38 may lodge a complaint with the International Labour Organization Administrative Tribunal (ILOAT) in accordance with Staff Regulation 301.11.

17. On 1 July 2014 the Respondent transferred its national staff members, including the Applicant, from appointments governed by the United Nations Staff Regulations and Rules, to those governed by the FAO Staff Regulations and Rules.

18. Under section 301.11.2 of the FAO Staff Regulations,

The International Labour Organisation Administrative Tribunal shall, under conditions prescribed in its Statute...hear and pass judgment upon applications from staff members alleging non-observance of their terms and conditions of appointment, including all pertinent Rules and Regulations.

19. In her letter of appointment dated 6 June 2014 and received by the Applicant on 11 June 2014, the Applicant signified her acceptance by signing the letter on 11 June 2014 that she would be bound by the FAO Staff Regulations and Rules. The effective date of the appointment was 1 July 2014 which means that as from that date, ILOAT has jurisdiction on the dispute that the Applicant has with the WFP.

20. In response to the Reply on the jurisdictional issue, the Applicant seems to aver that her contract is administered by the United Nations Development Programme (UNDP) but the Tribunal has found no evidence of this as her contract makes no reference to UNDP.

Ruling

21. The Tribunal therefore decides that the matter is not receivable for want of jurisdiction.

(Signed)

Judge Vinod Boolell

Dated this 30th day of March 2016

Entered in the Register on this 30th day of March 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi